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10/811,348

03/26/2004

Manfred Gilbert

LEAP:136US

1567

7590

01/24/2006

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EXAMINER

NGUYEN, THONG Q

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,348

Applicant(s)

GILBERT ET AL.

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 04 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The present Office action is made in response to the amendment filed on 11/4/2005. It is noted that in the amendment, applicant has made changes to the specification, the drawings and the claims. Regarding to the claims, applicant has amended claims 1 and 15 and added a new independent claim, i.e., claim 20, into the application. A review of the device of the newly-added claim has resulted that the device of the new claim has the same scope as that of the original and/or amended claims, and thus all of pending claims 1-20 are examined in this Office action.

Drawings

2. The drawings contained one sheet of corrected figure 5 was received on 11/4/05. The corrected figure 5 is accepted by the Examiner.

Specification

3. The lengthy specification which is amended by the amendment of 11/4/05 has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

4. The objection to claim 15 as set forth in the previous Office action is now withdrawn due to the amendment to the claim as filed in the amendment of 11/4/05.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-6, 8-12, 14-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Apotheloz (U.S. Patent No. D459,744 S, of record).

Apotheloz discloses a microscope. The microscope as described in figures 1-12, in particular, in figures 1-4 comprises a stand having a C-shaped configuration for supporting an optical system having an eyepiece and an objective turret and a stage. The stand comprises an interior surface facing to a user who uses the microscope by seeing through the optical system and an exterior surface facing to the rear side of the microscope. The interior surface of the stand comprises a fixed recess section facing into the inner surface of the interior surface. See figures 1-3 in which figures 1-2 show the front side of the stand and figure 3 shows the rear side of the stand which rear side is a closed surface. The surfaces defined between the interior surface and the inner recess surface are a plurality of left, right and rear walls extending between the interior and inner recessed surfaces. It is noted each of the left and right wall has a planar configuration and the rear wall has an arcuate configuration. See figures 1 and 5-6. It is noted that at least the lower end of the recess section is positioned above the stage and lower than the objective turret. The recessed section of the interior surface is used by a user as a place for gripping the microscope wherein

the shape defined by the palm and fingers of the user's hand is in contact to the shape defined by the recessed section of the stand.

Regarding to the feature related to the so-called "removable panel" recited in claim 15, it is noted that the section supporting the optical system which is in contact with the interior surface of the stand is a removable panel.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 7, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apotheloz in view of Stevens (of record).

The microscope with the interior surface defined an inner recessed section as provided by Apotheloz does not state that the inner recessed section comprises a textured surface for the purpose of increasing the static coefficient of friction. However, it is known to one skilled in the art to use a surface having a textured surface for such mentioned purpose. One use of a textured surface on a surface used to grip by a user's hand is disclosed in the apparatus provided by Stevens. See column 4, lines 45-65. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the microscope provided by Apotheloz by using a textured surface on a surface using to grip by a user's hand as suggested by Steven for the purpose of increasing the coefficient of friction between the user's hand and the recessed section of the interior surface of the stand when the user grips the microscope.

Response to Arguments

8. Regarding to the rejections of claims 1-3, 6, 8-12, 14-17 and 19 under 35 USC 102(b) over the art of Komatsuzaki and claims 7, 13 and 18 under 35 USC 103(a) over the art of Komatsuzaki in view of Stevens, the amendments to the claims and applicant's arguments filed on 11/4/05 have been fully considered and found persuasive. Thus, those rejections are now withdrawn.

9. Regarding to the rejections of claims 1-6, 8-12, 14-17 and 19, now applied to claims 1-6, 8-12, 14-17, 19 and 20, under 35 USC 102(b) over the art of Apotheloz and claims 7, 13 and 18 under 35 USC 103(a) over the art of Apotheloz in view of Stevens, the amendments to the claims are not sufficient to overcome the rejections and applicant's arguments filed on 11/4/05 have been fully considered but are not persuasive. Thus, those rejections are still maintained.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Applicant has argued that the art of Apotheloz does not disclose a curved inner recess surface. The Examiner respectfully disagreed and respectfully invited the applicant to review the art of Apotheloz. Applicant should note that the figures 1 and 7 disclose an arm having an inner surface and an outer surface. The inner surface comprises a recess having a curved V shaped and the outer surface of the arm also has a curved V shaped. See Diagram below.

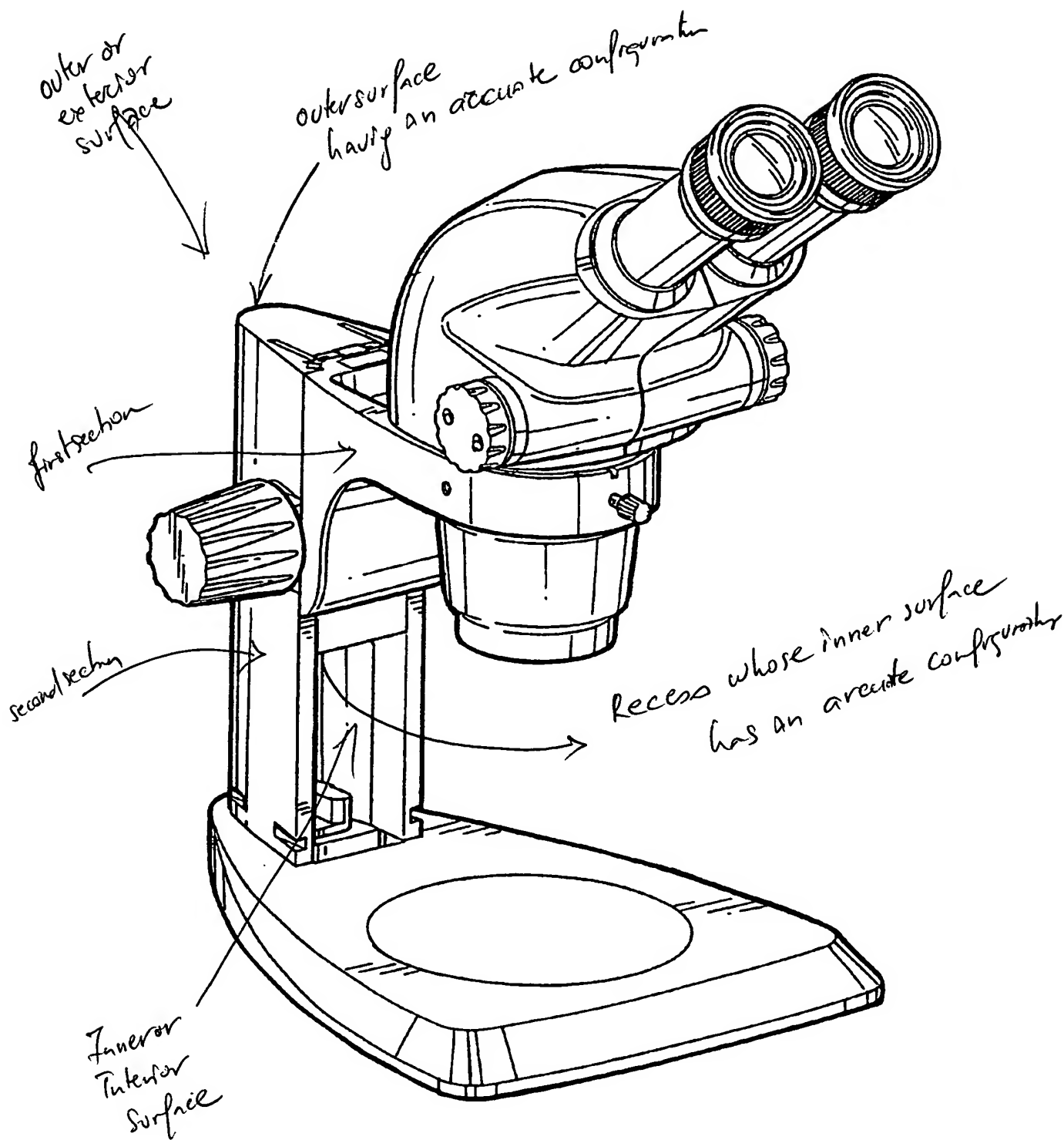


FIG. 1

Applicant should note that while the present claims recites a curved or arcuate microscope arm or an arcuate inner recess; however, the claims do not recites any specific limitation/feature to make the claim distinguish from the curved or arcuate shape of the inner recess formed on the microscope arm provided by Apotheloz.

2. It is noted that applicant has drawn diagram to show that the microscope arm of the Patent D459,744 S and labeled the whole microscope arm of that patent as "NOT Curved". See amendment, page 11. The Examiner is respectfully disagreed with the applicant because the microscope arm disclosed by Apotheloz comprises two sections in which the first section supports the microscope and the second section connected the section supported the microscope to the base. The combination of both sections defines a C-shaped wherein the outer surface of the second section has an arcuate configuration. Applicant should note that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

10. The additional references are cited as of interest in that each of Patent Nos. 1,996,141; 2,214,367 and 2,417,044 discloses a microscope whose arm has an arcuate configuration. The Patent No. D 243,601 discloses a microscope whose arm has a recess formed between two legs of the microscope arm.

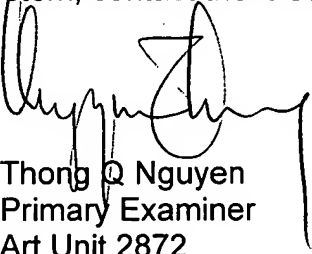
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q. Nguyen
Primary Examiner
Art Unit 2872

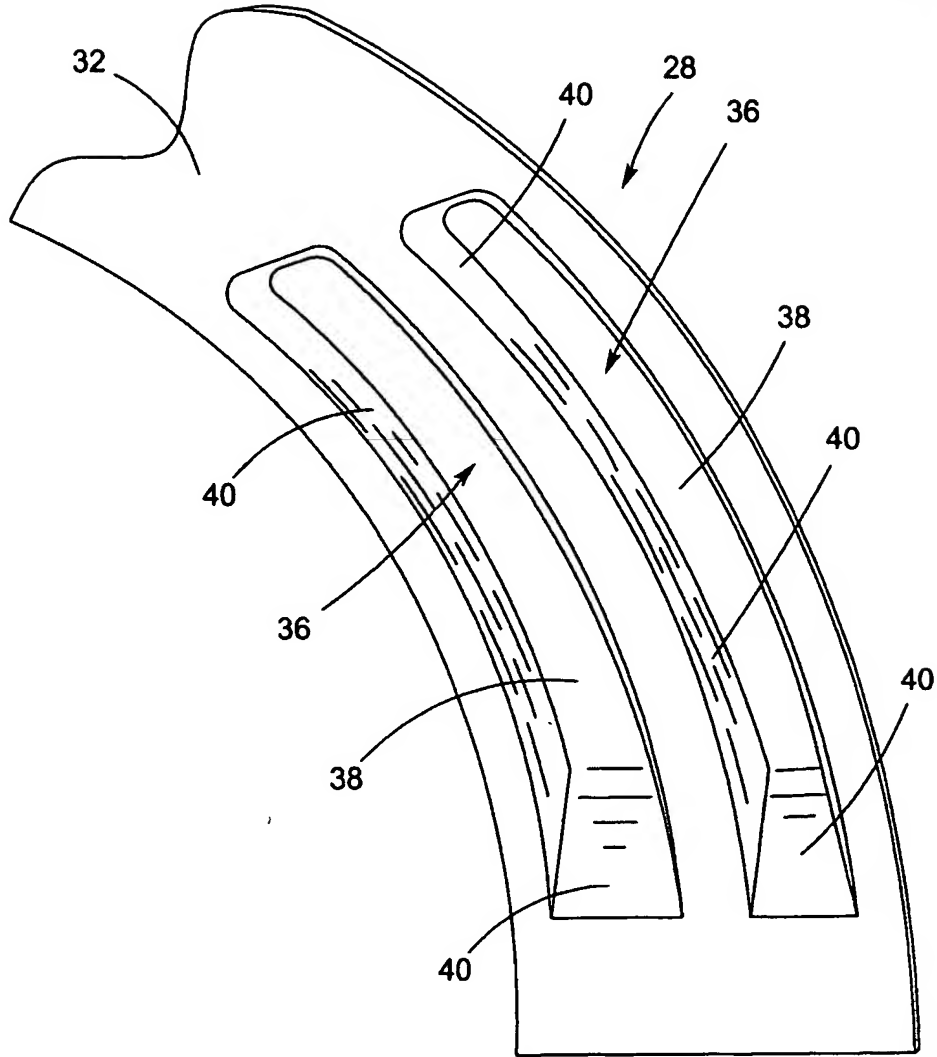


Fig. 5